IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 14997 of 2005

For Approval and Signature:

HON'BLE MR JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT STATE ROAD TRANSPORT CORPORATION - Petitioner(s)

Versus

PRATAPSINH K RATHOD - Respondent(s)

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Appearance :

MR ASHISH M DAGLI for Petitioner No(s).: 1.

MR MUKESH H RATHOD for Respondent No(s).: 1.

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CORAM : HON'BLE MR JUSTICE M.R. SHAH

Date : 03/08/2005

ORAL JUDGMENT

(1) Rule. Service of Rule is waived by Shri Mukesh H. Rathod, learned advocate on behalf of the respondent workman. With the consent of the learned advocates for the parties, the matter is taken up for final hearing today.

(2) In this petition under Articles 226 and 227 of the Constitution of India, the petitioner – GSRT Corporation has challenged the legality and validity of the judgment and award passed by the Labour Court, Himatnagar dated 23.3.2005 passed in Reference (LCH) No.55 of 2000 by which the Labour Court, Himatnagar has partly allowed the said reference by quashing and setting aside th order of dismissal passed by the disciplinary authority dated 20.6.1996 by which the petitioner has dismissed the respondent workman from services and the labour court has also directed the petitioner to pay backwages for the period from 20th June, 1996 to 31st September, 2003, however, the labour court has not granted reinstatement as the respondent workmen has in between already attained the age of superannuation on 31st September, 2003.

(3) The respondent workman was serving as the Conductor with the petitioner Corporation. He was absent without getting the leave sanctioned for the period from 13th June, 1995 to 14th July, 1995 and therefore, the petitioner was chargesheeted on 27th September, 1995 for remaining absent without getting the leave sanctioned, i.e., because of the unauthorized absenteeism. It appears that even thereafter also the respondent workman was absent. Departmental inquiry was initiated

against the respondent workman and considering the fact that the respondent workman did not even participate in the departmental inquiry and did not even submit any medical certificate, the disciplinary authority passed the order of dismissal order on 20th June, 1996. The respondent workman raised the industrial dispute challenging the order of dismissal dated 20th June, 1996 which was referred to the Labour Court, Himatnagar for it adjudication which was numbered as Reference (LCH) No.55 of 2000. The Labour Court though held that charge of unauthorized absenteeism against the respondent workman is proved, however, exercising the powers under Section-11-A of the Industrial Disputes Act and considering the fact that application under Section 33-(2)(B) of the I.D.Act was submitted after one month and 18 days,the Labour Court allowed the said reference by quashing and setting aside the order of dismissal passed by the disciplinary authority. However, considering the fact that the respondent workman has attained the age of superannuation on 31st September, 2003, did not pass any order with regard to reinstatement, however, directed to the petitioner corporation to pay backwages from the date of dismissal till the workman has attained the age of superannuation with continuity of service and all other consequential benefits. Being aggrieved and dissatisfied with the judgment and award passed by the Labour Court, Himatnagar dated

23.3.2005 passed in Reference (LCH) No.55 of 2000, the petitioner corporation has preferred the present special civil application under Articles 226 and 227 of the Constitution of India.

(4) Shri A.M.Dagali, learned advocate appearing on behalf of the petitioner corporation has vehemently submitted that in view of the fact that charge of unauthorized absentism is proved against the respondent workman and that the respondent workman was on unauthorized leave for long period and that he did not produce any medical certificate before the authorities as well as disciplinary authority and not even during the inquiry and for the first time the one medical certificate for th period from 16.4.1995 to 19.4.1995 was submitted by the respondent workman, the Labour Court was not justified in quashing and setting aside the order of dismissal passed by the disciplinary authority. He further submitted that in any case, the Labour Court ought not to have passed the order of backwages for the period from the date of dismissal till the respondent workman attained age of superannuation. It is submitted that to pay backwages to the respondent workman in the facts and circumstances of the case, would be allowing and giving a premium to a person who himself was absent without any justifiable reason and against whom the charge of unauthorized absenteeism is proved and

therefore, it is requested to allow the present special civil application and / or modify the order passed by the Labour Court with regard to backwages etc.

(5) Shri Mukesh H. Rathod, learned advocate appearing on behalf of the respondent workman has tried to support the judgment and award passed by the Labour Court. He has further submitted that in the facts and circumstances of the case, more particularly, when the respondent workman has already attained the age of superannuation on 31st September, 2003 and considering his long span of his service career i.e more than 20 years, punishment of denial of retirement benefits will be too harsh and disproportionate to the charge proved against the workman. He has further submitted that while upholding the judgment and award passed by the Labour Court with regard to quashing and setting aside the order of dismissal passed by the disciplinary authority, backwages to some extent can be denied so that the respondent can have monetary benefits and therefore, it is requested to modify the judgment and award passed by the Labour Court to the aforesaid extent.

(6) Heard the learned advocates appearing on behalf of the parties.

(7) It is true that the respondent workman was absent without getting the leave sanctioned. However, considering his long service career of more than twenty years and no further allegations and considering the fact that he has already attained the age of superannuation on 1st September, 2003, to deny retirement benefits after serving for more than 20 years will be too harsh and will be disproportionate to the charge proved against the respondent workman. At the same time, to award and/ or grant backwages to the the respondent workman for interregnum period would also be awarding premium to a person who had proceeded on unauthorized leave and the charge against whom with regard to absentism is proved. Under the circumstances, the judgment and award passed by the Labour Court is required to be interfered with to some extent while denying backwages to the respondent workman in the facts and circumstances of the case.

(8) For the reasons stated above, the judgment and award passed by the Labour Court, Himatnagar dated 23.3.2005 passed in Reference (LCH) No.55 of 2000 is hereby modified by denying any backwages to the respondent workman. In other words, the respondent workman will not be entitled to any backwages from the date of dismissal till he attained the age of superannuation. The rest of the judgment and award

passed by the Labour Court is not disturbed. The petitioner to pay retirement benefits to the respondent workman accordingly within a period of four months from the date of receipt of this order.

Rule is made absolute to the aforesaid extent with no order as to costs.

[M.R.Shah, J.]

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